***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

WRIT PETITION Nos.23673 OF 1997 & 1845 OF 2006

% 14-02-2006

Between:

Obhinni Srinivasa Rao S/o.Thrimurthulu.

…Petitioner

And

Deputy Commissioner, Endowments Department,

Kakinada & others

…Respondents

! COUNSEL FOR PETITIONER: Mr.V.V.L.N.Sarma

^ COUNSEL FOR RESPONDENTS: G.P.for Endowments

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> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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Dated 14th February 2006

W.P.No.23673 of 1997

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COMMON ORDER:

Both the writ petitions were filed by the same petitioner, and they relate to his service in Sri Chandrasekhara Swamy Vari Devasthanam, Gandapalli, East Godavari District, (for short "the Devasthanam"). The parties are referred to, as arrayed in W.P.No.1845 of 2006.

The petitioner was engaged as NMR employee, by the Executive Officer of the Devasthanam, the 5th respondent, on 1.3.1995, on a consolidated pay of Rs.500/-. On 7.9.1997, the Deputy Commissioner of Endowments, Kakinada, the 4th respondent, addressed a letter to the 5th respodnent, stating that the appointment of the petitioner and payment of salary to him, was without sanction from the competent authority. It was also indicated that the Executive Officer is personally liable for the amount paid to the petitioner herein, towards salary. On receipt of this, the 5th respondent issued proceedings dated 12.9.1997, terminating the service of the petitioner, and requiring him to repay the amount paid to him towards salary. Petitioner filed W.P.No.23673 of 1997, challenging the said proceedings. The writ petition was admitted on 19.9.1997, and an order of interim stay was granted, only as regards recovery of the amount from the petitioner.

Though this Court did not stay the termination of the service of the petitioner, the Executive Officer continued him in service. The petitioner states that his services were regularized by the 5th respondent, through proceedings dated 22.7.2000. The Regional Joint Commissioner of Endowments, Multi Zone-I, Kakinada, the 3rd respondent, addressed letter dated 8.12.2005, to the 4th respondent, stating that there are certain allegations against the petitioner, and that he was being continued in the service, on the basis of the orders of stay. The 4th respondent was required to take necessary action. The 4th respondent, in turn, addressed letter dated 30.12.2005, requiring the 5th respondent to take necessary action against the petitioner. The 5th respondent passed orders dated 25.1.2006, removing the petitioner from service, in view of the orders passed by the respondents 3 and 4. W.P.No.1845 of 2006 is filed, against it.

Sri V.V.L.N.Sarma, learned counsel for the petitioner, submits that the termination of service of the petitioner, through orders dated 12.9.1997, is illegal and unsustainable in law. He contends that the petitioner was not issued any notice, and that there does not exist any justification, for directing recovery of the amount paid to

the petitioner, towards salary. He further contends that though this Court did not stay the termination, the

5th respondent had continued the petitioner on his own accord, and the subsequent proceedings, culminating in order, dated 25.1.2006, are also contrary to law.

Learned Government Pleader for Endowments submits that the successive Executive Officers of the Temple, acted detrimental to the interests of the institution, and were in fact, hand in glove with the petitioner. He contends that as and when the serious irregularity in the payment of the petitioner was pointed out, the Executive Officers of the Temple issued half-hearted proceedings, and thereby, enabled the petitioner to continue in service. Learned Standing Counsel for the Devasthanam had argued on the same lines.

A perusal of the various proceedings, referred to in the preceding paragraphs, discloses the casual and illegal manner in which the successive Executive Officers of the Temple have acted. The petitioner was engaged as NMR, without obtaining permission from the competent authority. The 4th respondent took exception to such a course of action, and required the 5th respondent to take necessary steps. Feigning compliance with the directions issued by the 4th respondent, the 5th respondent terminated the service of the petitioner, through proceedings dated 12.9.1997. In his affidavit in W.P.No.23673 of 1997, the petitioner stated that he was not served with the order, dated 12.9.1997. All the same, he filed a copy of it. This discloses as to how the then Executive Officer was aiding the petitioner. The collusion did not stop there.

This Court passed an interim order, dated 19.9.1997, staying the recovery of amount. The termination was not suspended, or otherwise interdicted. Therefore, there was no basis for the petitioner, to continue in service. However, the friendly Executive Officer continued the petitioner in service, that too, without issuing orders of revocation of order of termination, or anything, akin to it.

The 5th respondent proceeded further and addressed letter, dated 24.5.2000, to the 4th respondent, seeking permission to regularize the service of the petitioner, though the order of termination was holding the field. The then Deputy Commissioner, by name L.Venkata Chary, is said to have addressed letter, dated 6.7.2000, which reads as under:

> "This attention of the Executive Officer of the subject temple is invited to the reference 2nd cited (letter dated 24.5.2000 of the Executive Officer). He may regularize the services of Sri O.Srinivasa Rao, N.M.R., duly following the Commissioner's instructions issued in the reference 1st cited and also as per rules in force."

Taking clue from this, the then Executive Officer, by name R.Gopala Krishna, regularized the services of the petitioner, as Record Assistant, through order dated 22.7.2000, in the Scale of Rs.1535-2840, with D.A. 58.85% and H.R.A.10%, with retrospective effect from 1.4.2000. Such were the brazen acts of illegality committed by the Executive Officers, detrimental to the interests of the temple and general public.

This entire illegality appears to have been noticed by the 3rd respondent. Obviously, because he was not fully posted with the facts, he proceeded as though the petitioner was being continued, on the strength of the orders of stay, granted by this Court in W.P.No.22673 of 1997. He exhorted the respondents 4 and 5, to take necessary steps. Here again, the 5th respondent passed an order, dated 25.1.2006, removing the petitioner from service, without issuing any notice, with a view to provide fertile ground for the petitioner, to challenge the same.

If the officials have gone to the extent indicated above, to protect the interests of a person, who was engaged as NMR, it is not difficult to measure their commitment or the lack of it, to the temple, and its development. All norms, principles and rules were left to winds, with the sole object of continuing the petitioner and conferring benefits upon him, at any cost. The result is that the petitioner had already walked away with substantial income of the temple. The Executive Officers, who were responsible for continuing the petitioner, particularly, the one who has taken steps for regularization of the service of the petitioner, are liable to be proceeded, whether they are in service, or have since retired.

Notwithstanding the illegality, in the matter of appointment and continuation of the petitioner, thereafter, this Court is compelled to interfere in the matter, on account of the fact that the petitioner was not put on notice. The learned counsel for the petitioner relied upon the orders passed by this Court in W.P.Nos.4402 of 2002,

22937 of 2002 and 6166 of 2002. Though the principle needs to be applied, the relief has to be moulded, taking the peculiar circumstances of this case, into account. It has already become evident that the continuation of the petitioner in service, after 12.9.1997, was *ex facie* illegal, and without any basis.

Having regard to the fact that the order, dated 12.9.1997, was passed, without any notice to the petitioner, the same deserves to be set aside, and the petitioner must be relegated to the position, which he was occupying, as on that date. This Court cannot permit the petitioner to enjoy the illegal and unlawful benefit, which was conferred upon him, by deliberately misinterpreting the orders of stay granted by this Court.

For the foregoing reasons, the order dated 12.9.1997, impugned in W.P.No.23673 of 1997, and the one dated 25.01.2006, challenged in W.P.No.1845 of 2006, are set aside. It shall be open to the respondents, to take necessary steps, after issuing notice to the petitioner. Till such time, the petitioner shall be continued as NMR, and shall be paid the salary, at the rates, which are now in force in the Endowments Department.

The 2nd respondent is directed to get the entire issue enquired into, and fix the liability on the persons, who are responsible for regularization of service of the petitioner, even after his termination, and even while the writ petition challenging the same was pending, without any orders of stay of termination. There shall be no order as to costs.

L.NARASIMHA REDDY, J

Dt. 14th February 2006

Note: L.R.copies be marked.

(B/o)

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